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No. 80-1757

# In the Supreme Court of the United States

OCTOBER TERM, 1980

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W. JASON MITAN,

*Petitioner,*

vs.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

*Respondents.*

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## BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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## QUESTIONS PRESENTED FOR REVIEW

1). Whether final attorney disciplinary orders of the Supreme Court of Illinois may only be reviewed by the United States Supreme Court and not by a federal district court?

2). Whether Petitioner's claims are barred by the doctrine of *res judicata*?

3). Whether Petitioner failed to invoke federal jurisdiction pursuant to 42 U.S.C. § 1985?

# TABLE OF CONTENTS


| | PAGE |
|---|---|
| Questions Presented for Review | i |
| Table of Authorities Cited | iv |
| Statutory Provisions | v |
| Statement of Case | 1 |
| Reasons for Denying the Writ | 3 |
| I. Final attorney disciplinary orders of the Supreme Court of Illinois may only be reviewed by the United States Supreme Court and not by a federal district court | 3 |
| II. Petitioner's claims are barred by the doctrine of *res judicata* | 4 |
| III. Petitioner failed to invoke federal jurisdiction pursuant to 42 U.S.C. § 1985 | 5 |
| Conclusion | 5 |


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## TABLE OF AUTHORITIES CITED

PAGE

Colaizzi v. Walker, 542 F.2d 969 (7th Cir. 1976), *cert. denied,* 430 U.S. 960 (1977) ..... 5

Coogan v. Cincinnatti Bar Ass'n, 431 F.2d 1209 (6th Cir. 1970) ..... 4

Deane Hill Country Club, Inc., v. City of Knoxville, 379 F.2d 321 (6th Cir. 1967), *cert. denied,* 389 U.S. 975 (1967) ..... 4

Doe v. Pringle, 550 F.2d 596 (10th Cir. 1976), *cert. denied,* 431 U.S. 916 (1977) ..... 3

Goldfarb v. Virginia State Bar Association, 421 U.S. 773 (1975) ..... 3

Griffin v. Breckenridge, 403 U.S. 88 (1971) ..... 5

Grossgold v. Supreme Court of Illinois, 557 F.2d 122 (7th Cir. 1977) ..... 3

Jones v. Hulse, 391 F.2d 198 (8th Cir. 1968), *cert. denied,* 393 U.S. 889 (1968) ..... 3

Kamsler v. Zaslawsky, 355 F.2d 526 (7th Cir. 1966) .... 5

Lesser v. Braniff Airways, Inc., 518 F.2d 538 (7th Cir. 1975) ..... 5

Lessman v. McCormick, 591 F.2d 605 (10th Cir. 1979) 5

In re Mitan, 75 Ill.2d 118, 387 N.E.2d 278 (1979), *cert. denied,* 444 U.S. 916 (1979) ..... 1, 3

Montana v. United States, 440 U.S. 147 (1979) ..... 4

Rodes v. Municipal Authority of Borough of Milford, 409 F.2d 16 (3rd Cir. 1969), *cert. denied,* 396 U.S. 861 (1969), *rehearing denied,* 396 U.S. 950 (1969) .... 4

PAGE

Sutton v. Eastern Viavi Co., 138 F.2d 959 (7th Cir. 1943) ..... 5

In re Teitlebaum, 13 Ill.2d 586, 150 N.E.2d 873 (1958), *cert. denied,* 358 U.S. 881 (1958), *rehearing denied,* 358 U.S. 923 (1958) ..... 3

Uston v. Airport Casino, Inc., 564 F.2d 1216 (9th Cir. 1977) ..... 5

## STATUTORY PROVISIONS

28 U.S.C. § 1257 ..... 3

42 U.S.C. § 1983 ..... 2

42 U.S.C. § 1985 ..... 2, 5

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## BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

### STATEMENT OF CASE

On January 12, 1979, the Supreme Court of Illinois handed down its opinion disbarring Petitioner from the practice of law in Illinois. *In re Mitan,* 75 Ill.2d 118, 387 N.E.2d 278 (1979). The decision of the Illinois court was based on a finding that Mitan had deliberately made false statements on his verified application for admission to the Illinois bar.

On August 20, 1979, Mitan filed a petition for a writ of certiorari in the United States Supreme Court. *Mitan* v.

*Illinois Attorney Registration and Disciplinary Commission,* No. 79-276. In that petition, Mitan raised various due process issues. The petition was denied on October 15, 1979. *Id.,* 444 U.S. 916 (1979).

On December 17, 1979, Petitioner filed suit in federal court. *Mitan* v. *Illinois Attorney Registration and Disciplinary Commission,* 79 C 5282 (N.D.Ill.). In his complaint, later amended, Petitioner sought to vacate his disbarment by claiming he was deprived sundry constitutional rights in violation of 42 U.S.C. §§ 1983, 1985. The case was dismissed on April 18, 1980.

Petitioner appealed the district court decision. On January 16, 1981, the United States Court of Appeals for the Seventh Circuit affirmed the lower court judgment.

## REASONS FOR DENYING THE WRIT

### I.

### FINAL ATTORNEY DISCIPLINARY ORDERS OF THE SUPREME COURT OF ILLINOIS MAY ONLY BE REVIEWED BY THE UNITED STATES SUPREME COURT AND NOT BY A FEDERAL DISTRICT COURT.

The states have a compelling interest in the practice of the legal profession within their boundaries. *Goldfarb* v. *Virginia State Bar Association,* 421 U.S. 773, 792 (1975). In Illinois, the Supreme Court has the inherent power to discipline attorneys. *In re Teitlebaum,* 13 Ill.2d 586, 593, 150 N.E.2d 873, 877 (1958), *cert. denied,* 358 U.S. 881 (1958), *rehearing denied,* 358 U.S. 923 (1958). When the Supreme Court of Illinois orders an attorney disciplined, it is an exercise of judicial power and is a final judgment of the highest state court. *See e.g., In re Mitan,* 75 Ill.2d 118, N.E.2d 278 (1979), *cert. denied,* 444 U.S. 916 (1979).

The United States Supreme Court has exclusive jurisdiction to review final judgments of the highest court of a state. 28 U.S.C. § 1257 (1970). Lower federal courts are wholly without jurisdiction to review, in an appellate capacity, the merits of state attorney disciplinary proceedings. *Doe* v. *Pringle,* 550 F.2d 596, 599-600 (10th Cir. 1976), *cert. denied,* 431 U.S. 916 (1977). *See also, Jones* v. *Hulse,* 391 F.2d 198, 200 (8th Cir. 1968), *cert. denied,* 393 U.S. 889 (1968). Therefore, attorney disciplinary orders of the Supreme Court of Illinois may only be reviewed in the United States Supreme Court by a petition for a writ of certiorari and not by a suit in the district court. *See e.g., Grossgold* v. *Supreme Court of Illinois,* 557 F.2d 122, 125 (7th Cir. 1977).

Since Petitioner has previously pursued his claims by a petition for a writ of certiorari, he is precluded from collaterally attacking his disbarment in the federal district court. This is so even though Petitioner has alleged a Civil Rights Act violation. The Civil Rights Act was not designed to be used as a substitute for the right of appeal, or to collaterally attack a final judgment of the highest court of a state to relitigate issues which were decided. *Coogan* v. *Cincinnatti Bar Ass'n,* 431 F.2d 1209, 1211 (6th Cir. 1970). *See also, Rodes* v. *Municipal Authority of Borough of Milford,* 409 F.2d 16 (3rd Cir. 1969), *cert. denied* 396 U.S. 861 (1969), *rehearing denied* 396 U.S. 950 (1969).

## II.

## PETITIONER'S CLAIMS ARE BARRED BY THE DOCTRINE OF RES JUDICATA.

The doctrine of *res judicata* is designed to facilitate the conclusive resolution of judicial disputes, thereby protecting litigants from the expense and vexation attending multiple lawsuits as well as conserving judicial resources. *Montana* v. *United States,* 440 U.S. 147, 153-154 (1979). A denial of certiorari signifies that appellate review has been exhausted, that the parties had their day in court, and that the case is *res judicata* in subsequent actions. *See e.g., Deane Hill Country Club, Inc.* v. *City of Knoxville,* 379 F.2d 321 (6th Cir. 1967), *cert. denied,* 389 U.S. 975 (1967). Once the United States Supreme Court denied Petitioner's earlier petition for a writ of certiorari, he was precluded from further litigating his claims because of the doctrine of *res judicata.*

## III.

## PETITIONER FAILED TO INVOKE FEDERAL JURISDICTION PURSUANT TO 42 U.S.C. § 1985.

Petitioner failed to allege any discrimination based on race, religion, color, national origin, or sex in either his initial or amended complaint. *See e.g., Uston* v. *Airport Casino, Inc.*, 564 F.2d 1216 (9th Cir. 1977). A complaint which does not reveal a racial or otherwise class based invidious discrimination does not state a cause of action under provisions relating to a conspiracy to interfere with civil rights. *Griffin* v. *Breckenridge*, 403 U.S. 88, 102 (1971); *Collaizzi* v. *Walker*, 542 F.2d 969, 972 (7th Cir. 1976), *cert. denied*, 430 U.S. 960 (1977); *Lesser* v. *Braniff Airways, Inc.*, 518 F.2d 538 (7th Cir. 1975).

Furthermore, the district court properly dismissed the complaint because Petitioner never alleged specific facts necessary to establish any wrongdoing. *See e.g., Sutton* v. *Eastern Viavi Co.*, 138 F.2d 959, 960 (7th Cir. 1943). A complaint under the civil rights conspiracy statute must allege specific facts showing a conspiracy against a plaintiff because of membership in a class, and that the criteria defining the class is invidious. *See e.g., Lessman* v. *McCormick*, 591 F.2d 605, 608 (10th Cir. 1979); *Kamsler* v. *Zaslawsky*, 355 F.2d 526 (7th Cir. 1966).

## CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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